

Law Society breaches competition rules over financial regulation training for conveyancers

**Case 1249/5/7/16 Socrates Training Limited v The Law Society of England and Wales
Competition Appeals Tribunal 26 May 2017**

BACKGROUND

The legal requirement that all ‘relevant persons’ must be made aware of the law relating to money laundering and terrorist financing and that they receive regular training relating in relation to this¹ has resulted in the Law Society of England and Wales being found to be in breach of competition law.

The Law Society is an independent professional body which represents solicitors in promoting the highest professional standards. However on 26 May 2017 the Competition Appeals Tribunal (CAT) published a judgement² which held that the Law Society had broken UK competition rules over a two year period from the end of April 2015 to date.

The case against the Law Society was brought by Socrates Training Limited (Socrates), who describe themselves as ‘the UK’s leading provider of online compliance courses for law firms’³. Socrates primarily provide courses to lawyers and accountants and its flagship course on anti-money laundering accounted for over half of its turnover as at July 2016⁴.

Since early 2015 the Law Society made it compulsory for all residential conveyancing law firms who were part of its Conveyancing Quality Scheme (CQS) to buy anti-money laundering and mortgage fraud training modules only from the Law Society. Both of these training courses are compulsory for relevant persons who provide services in relation to buying or selling property pursuant to reg 21 of the Money Laundering Regulations 2007.

‘Relevant persons’, for the purposes of the Money Laundering Regulations 2007 (shortly to be replaced by the Money Laundering Regulations 2017) include ‘independent legal professionals’ and apply to any law firm who provides legal services in connection with the purchase or sale of property. This is relevant for any law firm who assists clients in buying or selling a house.

The CAT judgement of 26 May found that the competition law breach by the Law Society had only arisen since the end of April 2015. This finding was partly due to the fact that since 2015 38% of mortgage lending was by lenders who required CQS accreditation from their panel firms – a significant increase of some 65% from the previous year⁵. This means that a large and rapidly increasing part of the market for the provision of training courses on anti-money laundering and mortgage fraud was tied up by the Law Society since the end of April 2015. It was also since around April 2015 that the Law Society had made it compulsory for

¹ [reg 21](#) of the Money Laundering Regulations 2017 and [reg 24](#) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

² http://www.catribunal.org.uk/files/1249_Socrates_Judgment_CAT_10_160517.pdf

³ See website of Socrates Training Limited: <http://socrates-training.co.uk/for-law-firms/>

⁴ para 7 of the CAT Judgement Case 1249/5/7/16 Socrates Training Limited v The Law Society of England and Wales Competition Appeals Tribunal 26 May 2017

⁵ *ibid.*, para 126

firms who were CQS accredited to purchase the anti money laundering and mortgage fraud training courses exclusively from itself.

Socrates claimed that the Law Society's actions in requiring all CQS accredited law firms to obtain training on these two modules exclusively from the Law Society were in breach of the Chapter I and II prohibitions of the Competition Act 1998. Socrates' case focussed on the Chapter II prohibition.

The prohibition in Chapter II of the Competition Act 1998, which was the main focus of this case, prohibits businesses which hold a dominant market position (normally over 45-50% of the relevant market) from abusing that position. As part of its judgement the Competition Appeals Tribunal held that the Law Society held a dominant market position in the relevant market from April 2015 onwards. The relevant market was defined in the case as being the market for the supply of training courses in anti money laundering, mortgage fraud and financial crime to law firms. The abusive behaviour that the Law Society was held to have carried out in this case was the tying or bundling of different products together without good reason. In this case the Law Society was found to have tied/bundled the purchase of the anti-money laundering and mortgage fraud training courses from itself to the CQS accreditation.

The Law Society's defence that it was objectively justified in requiring that the relevant courses must be obtained exclusively from itself was rejected on the basis that (amongst other things) the Law Society's training courses were prepared independently on behalf of the Law Society and/or commissioned from consultants, in the same way that Socrates might prepare its courses.

Next steps: following its judgement as to liability, the Competition Appeals Tribunal will next assess damages. According to a press release from Socrates⁶, their legal costs alone are in excess of £300,000.

ANALYSIS

This judgement against the Law Society is significant because it highlights the conflict between the provision of a public interest service and revenue making activities carried out by the same organisation. The Law Society's CQS accreditation was put into place to ensure that mortgage lenders and clients could be sure that the law firm dealing with their matter follows best practice, meets the highest standards of technical expertise and client service and is able to satisfy regulators, lenders and insurers.⁷

The CQS accreditation was designed to ensure that residential conveyancing law firms operate within the law and have up to date training in relevant areas, including those required by law (such as the anti-money laundering training). Acting in the public interest is part of the Law Society's *raison d'être*, as stated at the end of its press release for this case (see below). However, the Law Society's commercial activities have been shown in this case to come into conflict with it acting in the public interest. In particular the requirement that

⁶ <http://socrates-training.co.uk/freedom-for-cqs-firms/>

⁷ See the Law Society's webpage for the CQS accreditation: <http://www.lawsociety.org.uk/support-services/accreditation/conveyancing-quality-scheme/>

the Law Society's own training on anti money laundering and mortgage fraud be purchased by all CQS accredited members was what constituted the abuse of the Law Society's market position.

The Law Society will have to keep any such areas of possible conflict under careful review in future, to avoid breaching competition law again.

In a [press release](#) about the case on 26 May the Law Society said that it will "look again at the training elements of its Conveyancing Quality Scheme (CQS) in response to a ruling by the Competition Appeal Tribunal." Since the tribunal's judgement each of the training modules for the Law Society's CQS considered by the Competition Appeal Tribunal have been withdrawn by the Law Society. Law Society President Robert Bourns said "We are grateful to the tribunal for their guidance on changes to CQS that they make in their ruling and we will be looking at their comments as a matter of priority in the coming days."

From the Law Society's perspective, the CAT's ruling in this case has established that the Law Society currently holds a dominant market position in the market for the supply of training courses in anti money laundering, mortgage fraud and financial crime to law firms. As a result the Law Society will have to be careful not to carry out any actions which could be considered to be an abuse (for the purposes of the Chapter II prohibition) in this market, or it will risk being found in breach of the law again.

Bernard George, Director of Socrates said in a [press release](#) "I hope this case will prompt some reflection at the Law Society, including a reappraisal of the structure and objectives of the CQS, and of the Society's governance."